

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Revocation  
of the Commercial Driver Training  
Instructor License for Lyle E. Ferguson

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman on March 13, 2012, at the Office of Administrative Hearings.

James E. Haase, Assistant Attorney General, made an appearance on behalf of the Department of Public Safety. Lyle E. Ferguson, the Licensee, appeared on his own behalf and without counsel.

**STATEMENT OF ISSUES**

(1) Whether Mr. Ferguson provided instruction in such a manner that would adversely affect a student's education, or public safety, and that substantially departs from commonly accepted practices used by other driver education instructors, in violation of Minn. R. 7411.1850 (F)?

(2) If so, should the Order revoking Mr. Ferguson's Commercial Driver Training Instructor License for a period of one year be affirmed?

The Administrative Law Judge concludes that Mr. Ferguson provided instruction in a manner that adversely affected a student's education, and public safety, and that this instruction substantially departed from commonly accepted practices used by other driver education instructors. This misconduct violates Minn. R. 7411.1850 (F). The order of revocation should be affirmed.

Based upon the record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. The Licensee, Lyle E. Ferguson, is a 59-year-old man.<sup>1</sup>

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<sup>1</sup> Testimony of Lyle Ferguson.

2. In 2007, Mr. Ferguson worked as a driving instructor for Excalibur Diving School. During his tenure as a driving instructor with this company, a parent-customer of Excalibur complained that Mr. Ferguson spoke inappropriately to the customer's minor daughter during a driving lesson. The customer asserted, and Mr. Ferguson acknowledges, that he commented on how beautiful the young student's eyes were and that he would enjoy the opportunity to paint the girl's eyes in a portrait.<sup>2</sup>

3. Mr. Ferguson asserted at the evidentiary hearing that he later "smoothed things over" with the complaining parent and that he was not disciplined by his employer for making those remarks.<sup>3</sup>

4. Sometime later, Mr. Ferguson became a Driver Education Instructor with Ace Driving School.<sup>4</sup>

5. In September of 2011, the parents of T.G., contracted with the Ace Driving School to provide driver education instruction to T.G. in advance of her learner's permit road test.<sup>5</sup>

6. Because T.G. hoped to take her road test at the examination station on the date of her 16<sup>th</sup> birthday, September 6, Ace Driving School agreed to provide six hours of behind-the-wheel instruction to T.G. between September 3 and September 6, 2011. Ace agreed to provide three 2-hour driving lessons.<sup>6</sup>

7. Mr. Ferguson met T.G. for the first time on the afternoon of September 3, 2011. Ferguson drove to T.G.'s home for the first of the three scheduled lessons.<sup>7</sup>

8. During this session, while only Mr. Ferguson and T.G. were in the driving school's vehicle, Ferguson remarked: "Damn girl, you're hot!" Ferguson remarked upon the young girl's physical appearance approximately one dozen times during the two-hour driving lesson. T.G. found such remarks inappropriate and unwelcome.<sup>8</sup>

9. On the following day, September 4, another instructor from Ace Driving School provided two hours of behind-the-wheel instruction to T.G. This instructor made no comments that T.G. found inappropriate or unwelcome.<sup>9</sup>

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<sup>2</sup> Test. of L. Ferguson; Ex. 4 at 11.

<sup>3</sup> Test. of L. Ferguson.

<sup>4</sup> Test. of L. Ferguson; Ex. 4 at 1.

<sup>5</sup> Testimony of M.G.

<sup>6</sup> *Id.*; Test. of L. Ferguson.

<sup>7</sup> Testimony of T.G.; Test. of L. Ferguson.

<sup>8</sup> Test. of T.G.; Ex. 1.

<sup>9</sup> Test. of T.G.; Test. of M.G.

10. On Tuesday, September 6, Mr. Ferguson returned to T.G.'s home, for the last of the three agreed-upon driving sessions. It was earlier-agreed that following the conclusion of that day's driving instruction, Mr. Ferguson and T.G. would make their way to the Department's testing station for the road test. While T.G.'s father, M.G., asked if he could accompany the duo during their driving session and on to the testing station, Mr. Ferguson dissuaded M.G. from being present. Mr. Ferguson asserted that having a parent ride in the car during a driving lesson was unusual and would tend to make the student-driver nervous.<sup>10</sup>

11. During the course of the driving instruction on September 6, while only Mr. Ferguson and T.G. were in the driving school vehicle, Ferguson again remarked upon the young girl's physical appearance. Additionally he made remarks to the effect that:

- (a) If T.G. was 21 years of age, he would take her out for alcoholic drinks.
- (b) He would like the opportunity to paint T.G.'s portrait.
- (c) He would enjoy driving around with T.G. all day long.
- (d) T.G. should call him if she ever needed him.
- (e) T.G. should not date "loser" men.
- (f) He was willing to beat up any young man who mistreated her.
- (g) He loved her.

T.G. found such remarks inappropriate and unwelcome.<sup>11</sup>

12. After T.G. successfully passed her road test, Mr. Ferguson hugged T.G., placing his hands in the small of her back and kissed her on the side of the face. This conduct made T.G. uncomfortable and nervous.<sup>12</sup>

13. A few days later, M.G. overheard T.G. recounting to a friend some of the remarks Mr. Ferguson made during T.G.'s driving lessons. Because T.G. was not forthcoming when her father inquired as to what occurred, M.G. shared what he had overheard with T.G.'s mother, D.P. D.P. was able to elicit from T.G. some additional detail about what occurred during the driving lessons on September 3 and 6, 2011.<sup>13</sup>

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<sup>10</sup> Test. of M.G.; Test. of L. Ferguson.

<sup>11</sup> Test. of T.G.; Ex. 1.

<sup>12</sup> *Id.*; Test. of L. Ferguson.

<sup>13</sup> Test. of M.G.

14. On Monday, September 12, 2011, M.G. submitted a complaint to Donald Hoechst, Driver Education Coordinator for the Department's Driver and Vehicles Services Division. In a later electronic mail message, T.G. likewise detailed her complaints to Mr. Hoechst.<sup>14</sup>

15. On Wednesday, September 14, 2011, M.G. reported his concerns to the owner of Ace Driving School.<sup>15</sup>

16. Following M.G.'s report to Ace Driving School, Mr. Ferguson traveled to M.G.'s home to confront him. At the doorstep of M.G.'s home, Mr. Ferguson was agitated and spoke in a loud tone. Although Ferguson acknowledged that he thought that T.G. "was a good looking girl," he denied saying anything that was inappropriate or of sexual nature to T.G. M.G., concerned that the scene on his doorstep might soon turn violent, asked Mr. Ferguson to leave the premises.<sup>16</sup>

17. As M.G. retreated into his home, Mr. Ferguson, using a cellular telephone, placed a call to Mr. Hoechst. During the call, Mr. Ferguson told Mr. Hoechst that he was at M.G.'s home and that "we are working this out ...."<sup>17</sup>

18. Noting that Mr. Ferguson had not left his property, M.G. informed Ferguson that if he did not leave, M.G. would both summon the police and seek a restraining order against Mr. Ferguson.<sup>18</sup>

19. A Driver Training Instructor is a position of authority and trust. In Minnesota, Driver Training Instructors routinely have unsupervised access to minors.<sup>19</sup>

20. Many driver training companies operating in Minnesota have codes of conduct which prohibit driving instructors from having inappropriate communications, or contact of a romantic or sexual nature, with the students receiving instruction.<sup>20</sup>

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<sup>14</sup> Test. of M.G.; Exs. 1 and 2.

<sup>15</sup> Test. of M.G.

<sup>16</sup> Test. of M.G.; Test. of L. Ferguson; Ex 4 at 10-11.

<sup>17</sup> Test. of M.G.

<sup>18</sup> *Id.*

<sup>19</sup> Testimony of Donald Hoechst; see *generally*, Minn. R. 7411.0620, subp 7 (D) ("An instructor is disqualified from providing instruction to any student under age 18 for any violations specified in Minnesota Statutes, section 171.3215" (including "crimes against a minor" as defined by section 171.3215, subdivision 2a)).

<sup>20</sup> Exs. 7, 8 and 9.

21. Ace Driving School has a code of conduct which prohibits its driving instructors from having inappropriate communications, or contact of a romantic or sexual nature, with the students receiving instruction.<sup>21</sup>

22. On November 17, 2011, the Department's Driver and Vehicles Services Division issued an order revoking Mr. Ferguson's Commercial Driver Training Instructor License for a period of one year.<sup>22</sup>

23. Minnesota Rule 7411.1850 (F) prohibits driving instructors from providing "instruction in a way that adversely affects the student's education or public safety and that substantially departs from commonly accepted practices used by other driver education instructors."

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 171.35 and 171.38.

2. The Department gave proper notice of the hearing and has fulfilled all of the relevant substantive and procedural requirements of law and rule.

3. As the party proposing that a certain action be taken, the Department has the burden of proving facts at issue by a preponderance of the evidence.

4. On matters as to which T.G.'s and M.G.'s testimony conflicted with that of the Licensee, the testimony of T.G. and M.G. was more credible.

5. By engaging in communication of an intimate nature, Mr. Ferguson provided instruction in a manner that adversely affected a student's education.

6. By engaging in communication of an intimate nature, Mr. Ferguson provided instruction in a manner that adversely affected public safety.

7. By engaging in communication of an intimate nature, Mr. Ferguson provided instruction in a manner that substantially departed from commonly accepted practices used by other driver education instructors.

8. The Department established by a preponderance of the evidence that Mr. Ferguson's conduct violated Minn. R. 7411.1850 (F).

9. The license revocation is in the public interest.

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<sup>21</sup> Ex. 7.

<sup>22</sup> Ex. 5.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Commissioner AFFIRM the Order of Revocation.

Dated: April 16, 2012

s/Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digital Recording  
No transcript prepared

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Public Safety will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. Parties should contact Ramona Dohman, Commissioner, Department of Public Safety, 445 Minnesota Street, Suite 1000, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

Mr. Ferguson argues that the nature and context of his conversation with T.G. was misunderstood – by T.G., T.G.’s parents and Department officials. He asserts that he is a committed educator who, as part of building a genuine rapport with students, speaks to young people as they talk to each other. Mr. Ferguson says that he uses the language of teenagers to reach them and to motivate them to become skilled drivers.<sup>23</sup>

The Administrative Law Judge disagrees. The better understanding of the hearing record is that Mr. Ferguson’s misconduct with T.G. is part of a troubling pattern of boundary violations – a pattern that dates back to Mr. Ferguson’s tenure with Excalibur Diving School, in 2007, and continues to the present day. For example, Mr. Ferguson testified at the evidentiary hearing that because of the earlier complaint lodged against him with the management of Excalibur Driving School, he prefaced his remarks to T.G. with the acknowledgement that she was a minor. Thus, because of the incident in 2007, he phrased his entreaties to T.G. differently: “*If you were 18 ... I would invite you out for Chinese food*” and “*if you were 21 ... we would go out for drinks.*” Mr. Ferguson argues that his new-found, conditional language made clear that he was not seeking a personal relationship with T.G.<sup>24</sup>

This is not the lesson he should have drawn from the 2007 incident. The import of the 2007 complaint is that such a conversation between a driving instructor, and a minor girl, is always inappropriate; not that it is acceptable when it is phrased in a particular way.

Likewise troubling, Mr. Ferguson appears not to understand the appropriate boundaries between driving instructor and student, today. At the evidentiary hearing, Mr. Ferguson, while facing toward T.G. in the hearing room gallery, announced both his home address and his willingness to introduce T.G. to people that he knows in local art circles – apparently in an effort to invite a further relationship with her. If T.G.’s complaint to state authorities and her testimony on the witness stand is not sufficient to make plain that such talk is unwelcome, one wonders what could make the point clear.

Mr. Ferguson’s conduct in September of 2011 fell far below the professional standards insisted upon by his employer and that are prevalent among other driver education instructors. The order of revocation should be affirmed.

**E. L. L.**

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<sup>23</sup> Test. of L. Ferguson.

<sup>24</sup> *Id.*